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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,043	10/03/2003	Gary A. Foos	14222/YOD ITWO:0070	1647

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EXAMINER

COCKS, JOSIAH C

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/679,043

Applicant(s)

FOOS ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 14-23, 31 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-23, 31 and 36-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

1. Receipt of applicant's amendment filed 4/8/2005 is acknowledged.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 8, 14-23 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,666,479 to Clinton ("Clinton").

Clinton discloses in Figures 1-5 the invention substantially as described in applicant's claims 1-6, 8, 14-23, and 31. In particular, Clinton shows a torch (10) having a torch butt with an attached handle portion (17) (see Fig. 1), a valve assembly/operating mechanism (including at least portions 35, 37, 38, and 42) is operable to control a first flow of fluid through the torch butt (see Fig. 2 and col. 3, lines 25-36)), and a lever (21) selectively securable to pivot about first and second portions of the torch butt. The valve assembly, including lever (21) is arranged in a first orientation relative to the torch butt and may be moved to a second position that is inverted from the second position (see Fig. 1 and col. 4, line 46 through col. 5, line 15). Clinton further discloses that the torch includes the necessary sealing and sealing means (see col. 3, lines 37-64),

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a second throttling valve assembly (16), and handle portion (17) has an upper radius and a lower radius that are uniform along the length of the handle (see Fig. 5).

4. Alternatively, claims 1-6, 8, and 36-40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,709,446 to Miller ("Miller").

Miller discloses in Figures 1-11 a torch as described in applicant's claims 1-6, 8, and 36-40. In particular, Miller shows a torch includes a torch butt (62), a valve body (11) including a valve assembly (see components within valve housing 43) with valve (see at least Fig. 2). The valve assembly is removable from and positionable in the torch butt in two mutually opposed positions (see at least Figs. 2 and 3 and col. 3, lines 54-70). Lever (64) is also inverted in the same manner as the valve assembly. The valve body includes two fluid passageways (39 and 40) as described.

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clinton as applied to claim 1 above in view of U.S. Patent No. 5,571,427 to Dimock et al. ("Dimock").

Clinton discloses all the limitations of claim 7 except that the handle has a skull-shaped cross section.

Dimock teaches a torch in the same field of endeavor as Clinton. In Dimock the torch includes a handle (16) that has a D/skull shaped cross section (see Fig. 6).

Therefore, in regard to claim 7, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the torch handle of Clinton to incorporate the D/skull shape of Dimock as this shape desirably provides a better ergonomic fit and better gripping surface for the hand of the operator and reduces the wasted space associated with rounded handles (see Dimock, col. 5, lines 11-15).

8. Alternatively, claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller as applied to claim 1 above in view of U.S. Patent No. 5,571,427 to Dimock et al. ("Dimock").

Miller discloses all the limitations of claim 7 except that possibly that the handle has a skull-shaped cross section.

Dimock teaches a torch in the same field of endeavor as Miller. In Dimock the torch includes a handle (16) that has a D/skull shaped cross section (see Fig. 6).

Therefore, in regard to claim 7, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the torch handle of Miller to incorporate the D/skull shape of Dimock as this shape desirably provides a better ergonomic fit and better gripping surface for the hand of the operator and reduces the wasted space associated with rounded handles (see Dimock, col. 5, lines 11-15).

#### *Response to Arguments*

9. Applicant's arguments filed 4/08/2005 have been fully considered but they are not persuasive.

Applicant's argues that claims 1-8, 14-23, and 31 are patentable over Clinton as this reference does not show a removable and positionable valve assembly as claimed. The examiner does not agree. As noted in section 3 above, the examiner considers that Clinton discloses the invention substantially as described in applicant's claims 1-6, 8, 14-23, and 31. In drawing this conclusion, the examiner has reasoned that the valve assembly recited in these claims is met by the disclosure in Clinton of the valve assembly/operating mechanism that includes at least portions 35, 37, 38, and 42 (see Clinton, col. 4, lines 27-44) and need not necessarily include valve block (22) and valve member (23). In Clinton, the valve block (22) and valve member (23) are shown, by way of distinct hatching (see Figs. 1-3), to be separate from one another and from the surrounding case of the torch. These elements are not described as being permanently fixed to each other or to any other structure. Accordingly, the examiner considers that these

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elements (22 and 23) would be capable of being removed and therefore are properly considered “removable.” Further, the examiner notes that pins (33 and 34) attach, among other things, portions of lever assembly to the valve member (23). These pins are described as being “symmetrically located with respect to valve member 23...”(see col. 4, lines 56-57). Thus, when valve member is removed, due to the symmetrical location of the pins (33 and 34), when the valve member (23) is reinserted in a second mutually opposed position, the torch would function normally.

Applicant's arguments with respect to amended claims 1-8 and new claims 36-40 are also now moot in view of the new ground(s) of rejection using the Miller reference.

Accordingly, applicant's claims are not considered to distinguish over the prior art of record.

### *Conclusion*

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
June 20, 2005

  
JOSIAH COCKS  
PRIMARY EXAMINER  
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